**Fair Political Practices Commission**
**Memorandum**

**To:** Chairman Randolph and Commissioners Blair, Downey, Huguenin and Remy

**From:** John W. Wallace, Assistant General Counsel
Luisa Menchaca, General Counsel

**Subject:** Approval of 2006 Regulatory Priorities

**Date:** September 27, 2005

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## A. INTRODUCTION AND METHODOLOGY

This memorandum outlines staff's recommendations for the Commission's regulatory priorities in Calendar Year 2006. Historically, this first discussion memorandum presents the recommendations in narrative form. The final memorandum, in December, will show the proposed regulations on a chronological table.

Regulatory ideas were solicited from staff in all of the divisions. In addition, staff investigated regulatory proposals that were considered in the past but due to workload were not pursued.[1] Once the proposals were collected, staff provided the list to executive staff for their review and guidance.

This memorandum contains those items that the executive staff believes are most urgent and would be manageable in light of the current fiscal and staff constraints. Staff is also mindful of the fact that the Commission has already committed to several projects that were started in 2005 and will continue into 2006.

Staff requests that the Commission approve or disapprove the recommendations. Staff will return in December with a formal calendar setting out dates for those items on which the Commission may take final action. The final table will also reflect staff's proposals regarding which items require interested person meetings, pre-notice hearings, and adoption hearings.

As in prior years, the rulemaking plan will also allow for quarterly review and revision and will attempt to spread the workload as evenly as possible throughout the year.

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[1] Section 11426 of the 1974 Administrative Procedures Act also allows interested persons to petition the Commission requesting the adoption, amendment or repeal of a regulation under certain circumstances.

## B. STATUTE POSSIBLY NEEDING REGULATORY INTERPRETATION IN 2006[2]

### 1. Assembly Bill No. 1755:

- Repeals two provisions that provide for campaign filings in connection with a March statewide primary election.

- Clarifies that a late contribution report is not required to be filed by a candidate or committee that has disclosed the late contribution pursuant to a specified electronic report.

- Clarifies that a late independent expenditure report is not required to be filed by a candidate or committee that has disclosed the late independent expenditure pursuant to a specified electronic report.

- Extends, from 30 days to 45 days, the amount of time between the time a person completes a term of office and begins a term of the same office or another office of the same jurisdiction, for which the person is not deemed to have assumed office or left office.

- Clarifies that candidates for city treasurer are required to file a statement of economic interests with the city clerk.

- Requires candidates for judge to file a statement of economic interests with the person with whom the candidate's declaration of candidacy is filed, instead of filing the statement with the clerk of the court.

- Makes other technical and clarifying changes.

**Proposal:** Staff anticipates there may be a need for regulatory interpretation of the legislative amendments in 2006. However, at this time, specific regulatory approaches have not been identified.

## C. CONTINUING PROJECTS

**1(a) Affiliated Entities (Reg. 18428)**: Discusses reporting by "affiliated entities." May be further amended to clarify application of the aggregation provisions to local candidates and committees, add a definition of "affiliated entities" or codify other advice in the area.

[2] As of the writing of this memorandum, only one bill has been enrolled to the Governor that may require regulatory action

**(b) Aggregation under § 84308:** Section 84308 disqualifies any "officer" of a public agency, who is running or has run for elective office, from participating in decisions affecting his or her campaign contributors. The statute provides that when a closed corporation is a party (or participant), the majority shareholder of the corporation is also a party (or participant). This project considers whether further clarification of this aggregation rule is necessary.

**2. Requiring Political Parties to Deposit Hard and Soft Money into Separate Bank Accounts (Prop. 34):** Section 85303(a) prohibits recipient committees, other than candidate controlled and political party committees, from accepting any contribution totaling more than $5,000 per calendar year for the purpose of making contributions to candidates for elective state office. Section 85303(b) prohibits political party committees from accepting any contribution totaling more than $25,000 per calendar year for the purpose of making contributions to candidates for elective state office. Section 85303(c) provides that there are no limits on contributions to recipient committees and political party committees provided that the contributions are used for purposes other than making contributions to candidates for elective state office. Proposition 34 does not expressly require that contributions in excess of the $5,000 or the $25,000 contribution limit be deposited into separate non-candidate support accounts. However, without such a requirement, recipient committees and political party committees can easily circumvent or inadvertently violate contribution limits.

A regulation to address the problem might do the following:

- Require that contributions in excess of the $5,000 or the $25,000 contribution limit be deposited in an account that is separate from any account used to make contributions to candidates.

- Prohibit the making of contributions from non-candidate support accounts.

- Require that committees and political party committees notify other committees to which non-candidate support funds are transferred, advising that the funds may only be used for non-candidate support.

- Permit committees and political party committees to allocate or transfer up to $5,000 or $25,000 of an excess contribution to a candidate support account from a non-candidate support account, provided that the transfer does not violate any contribution limits and the reportable source for the contribution is the original contributor.

**3. McCain-Feingold; Federal Preemption Of State Reporting Law:** Under the recently-amended federal counterpart of the Political Reform Act, a specified percentage of certain expenditures jointly relating to federal and state or local elections must be reported under the federal system as attributable to the federal election. California may wish to use a more accurate method for allocating such expenditures, and require that expenditures reportable under California law be apportioned under the California method. There is some

question as to whether federal law permits California to implement a more accurate method for state reporting purposes. Staff will present to the Commission a draft letter to the Federal Election Commission, seeking an FEC advisory opinion on whether California may require reporting of joint federal-state expenditures under a formula that differs from the one used for federal reporting purposes.

## D. NEW PROJECTS

### *1. High-Priority Projects*

**(a) Credit Card Contributions – Billing extended for a specified time period or contributions made on an ongoing basis.** Reporting of contributions is governed by regulation 18421.1. Some contributions are set up to be paid out over a specified period of time, or on an ongoing basis. For example, in the first instance a contribution is made for $90, but payment is spread out over 3 months, $30 per month. In the second instance, a contributor wishes to contribute $10 a month for an indefinite time period.

Should the total amount be reported when the first payment is made (regulation 18421.1(e)), or should it be treated as a pledge under regulation 18216? Treated as a pledge, the payment would not need to be reported until it was actually transferred to the candidate or committee. In the example set forth above, only $30 would be reported initially, as opposed to $90. As to contributions made for an indefinite time period, but on a monthly basis, it is unclear under the existing regulation, as to what amount should be reported.

**Proposal:** Amend regulations 18421.1 and 18216 to clarify the reporting of contributions made through revolving accounts.

**(b) Subject: One-Bank Account Rule Regulation Proposal – Amendments to Regulations 18524 and 18432.5: Committees Receiving Contributions Electronically Through Vendors.** Vendors may run a website, collect the contributor information and collect the money. In the *Turner* Advice Letter, No. A-05-020, staff advised that this is a permissible set-up for collecting contributions. However, regulation 18524 does not speak to these types of situations. The first issue involves defining the type of "account" this vendor creates in collecting, and sometimes holding, the contributions and specifying in what permissible accounts the vendor may hold this money in while waiting to transfer it to the committee.

The second issue stems from the nature of the contractual relationships between the vendor and the committee. The vendor usually subtracts his fee from the money collected before transferring the money to the committee's bank account. Technically, the contribution never gets deposited into the campaign bank account in its entirety and the expenditure paid to the vendor never comes out of the campaign bank account.

In addition, since the vendor is an agent of the committee and not an intermediary, when the vendor receives the contribution or contributor payment information, the committee is also deemed to have received it. The same is not true for intermediaries; therefore the intermediary regulation should be clarified to reflect that these types of vendors are not intermediaries, and that under the electronic contribution rules, the committees should not be deemed to have received the contribution once the intermediary obtains possession or control. Another option may be putting into the intermediary regulation (regulation 18432.5) that all electronic vendors are agents.

**(c) Section 82015: Co-sponsored Payments.** Section 82015(a) of the Act defines a "contribution" as "a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment except to the extent that full and adequate consideration is received, unless it is clear from the surrounding circumstances that it is not made for political purposes." Section 82015(b)(2) provides as that a payment made at the behest of a candidate by a third party is a contribution to the candidate *unless* (among other exceptions) the payment is made principally for legislative, governmental, or charitable purposes. These payments are considered payments made for cosponsored events However, these "cosponsored" payments must be reported within 30 days following the date on which the payment or payments equal or exceed $5,000 in the aggregate from the same source in the same calendar year in which they are made.

**Proposal:** Staff would like to draft a form for reporting co-sponsored payments under 82015(b)(2)(B)(iii). A regulation may be needed to specify the reporting requirements. Currently, the statute requires disclosure of every payment made by the co-sponsor once the $5,000 threshold is met.

**(d) Regulation Proposal - 18421.2 "Street Address." (d) Regulation Proposal – 18421.1 "Street Address"** The Act requires disclosure of one's street address in various sections. (§§ 84102, 84108, 84203, 84204, 84211, 84219, 84302, 84305, 94305.5, 87105, 87210, and 87313). Specifically, section 84211 provides that campaign contributions in the amount of $100 or more shall be disclosed on campaign statements and shall include the name of the contributor and *his or her street address.* In turn, regulation 18421.2 currently provides that the term "street address" as used in Chapter 4 of the Act means the street name and building number, and the city, state, and zip code.

This project would explore whether the definition of the term "street address" needs further clarification in certain situations. For example, many people on active duty in the United States military service do not have a "street address," as that term is defined. This includes certain personnel serving in military branches oversees or serving on Navy ships. The only "address" available to such service personnel is the A.P.O. (Army and Air Force Post Office) or F.P.O. (Fleet Post Office (Navy)) address assigned by the military. As a result, certain contributions received from military personnel do not include a valid "street address" because there is no "street address," as that term is currently defined, to report. Under the current regulation, the filer may not be able to disclose the contribution as required by law, since the proper information is nonexistent.

**Proposed Solution:** This project would examine each section referencing the term "street address" in order to determine if certain modifications made be needed so as not to disenfranchise certain contributors because they do not have an address that includes a "street name and building number." The project will also examine other possibly effects of the current definition that could need clarification.

**(e) Regulation 18537.1: Carry Over of Contributions.** Section 85317 allows the carry over of campaign funds raised in connection with one election for elective state office to pay campaign expenditures incurred in connection with a subsequent election for the same elective office. Regulation 18537.1 clarifies that "subsequent election for the same elective state office" means the election to the next term of office immediately following the election/term of office for which the funds were raised.

**Proposal:** Amend regulation 18537.1 to clarify that in addition to the election to the next term of office immediately following the election/term of office for which the funds were raised, carry over is permissible where funds are raised for a primary election to the general election.

**(f) Regulation 18754: Statements of Economic Interests (Members of Boards or Commissions of Newly Created Agencies).** Section 87302.6 requires that all members of newly created agencies file statements of economic interests within 30 days of assuming office. The statements must disclose all economic interests until a conflict of interest code is approved by the Fair Political Practices Commission. These statements must disclose all interests in real property within the jurisdiction of the Agency, as well as investments, business positions and sources of income, including gifts, loans and travel payments.

**Proposal:** Subdivision (a)(3) of 18754 should be amended to exempt board and commission members merged into a new agency from the requirements of section 87302.6 or exempt agency heads already filing under full disclosure from the requirement to file as a new board member.

**(g) Define "Election Cycle."** Section 82015 states that forgiveness of a loan is a contribution. Regulation 18537 provides a limited exception to this rule if the forgiveness of the loan is within the same "election cycle" as the original loan. Under such circumstances, the "forgiveness is not considered an additional contribution. However, election cycle, for purposes of this requirement, is not defined. And while section 85204 defines election cycle, that statute expressly limits that definition to section 85309 and 85500.

**Proposal: (c) Define "Election Cycle."** Define "election cycle" for purposes of the exception in regulation 18537.

**(h) CPI increases:** Consideration of biennial gift and contribution limit adjustments.

***2. Important Projects***

**(a) Regulation Proposal – "Public Generally" Exception.** Regulation 18707 defines the "public generally" exception to the Political Reform Act's conflicts-of-interest provisions (section 87100 et seq.,). In order for the exception to apply the governmental decision must affect a "significant segment" of the public generally in "substantially the same manner." For decisions that affect real property, a "significant segment" is defined as "the percent of all property owners or all homeowners in the jurisdiction." However, the regulation does not provide any guidance on what constitutes being affected in "substantially the same manner," other than that the financial effect need not be identical. As a result, public officials are often unable to determine, with any degree of certainty, if the public generally exception applies.

**Proposed Solution:** In the *Berger* Advice Letter, No. A-05-054, staff attempted to provide additional guidance regarding when properties are affected in "substantially the same manner" by proposing a formula that provided a range of value, within which the financial effects were determined to be substantially the same. This proposed project would pick up where that letter left off and attempt to formulate a standard value range for applicable to differing properties for the purpose of identifying real property affected in "substantially the same manner." Staff proposes to amend regulation 18707.1 to clarify and identify an appropriate range of value that would be considered an effect in "substantially the same manner" with respect to financial effects on real property.

**(b) Regulation 18740: "Privileged Information: Statement of Economic Interests."** Notwithstanding its broad description, this regulation is very narrowly drafted, permitting an official to omit from his or her Form 700 only "the name of a person who paid fees or made payments to a business entity if disclosure of the person's name would violate a legally recognized privilege under California law."

Exceptions are construed narrowly to further the purposes of the Act. Yet there have been occasions over the years where Commission staff has found that disclosure of the location of real property owned by a public official would create physical danger out of proportion to the benefits of disclosure.

One example from the late 1990's involved a judge who, due to credible threats of retaliation by members of criminal gangs, wished to avoid disclosure of his interest in a residence occupied by his parents. The judge himself was then under 24-hour protective surveillance by police officers. Our general counsel at the time (Steve Churchwell) advised this judge not to disclose the location of the subject property on his Form 700. More recently, the issue came up again with respect to a newly-elected planning commissioner for the City of Carson who has for many years run a domestic violence shelter and two "safe houses" that she owned and whose locations are kept confidential to protect victims of domestic violence from retaliation after flight from a dangerous environment. Penal Code § 273.7 makes it a misdemeanor to maliciously publish or disclose the location of

such a "safe house," indicating a legislative judgment that public policy favors the protection of such information.

Unfortunately, while the Act protects the client lists of business enterprises, it makes no allowance for address information whose publication would predictably expose people to serious threats of physical mayhem.

**Proposed Amendments:** Because the present regulation was drafted to provide exemptions to avert one particular kind of (commercial) harm, regulation 18740 would have to be re-drafted to preserve its current content, while adding a provision that would allow an exemption from disclosure of real property locations when such disclosure presented a credible threat of physical violence, whether to the official or to other persons at the location. Depending on research into the practical problems encountered by public officials, the regulation might be limited to certain kinds of officials, such as judicial officers, law enforcement personnel and the owners of domestic violence shelters, or it could be more broadly drafted as authority for a general "physical threat" exemption. It probably will not be possible to ground this amendment on the existence of codified legal privileges. However, along with careful drafting, our existing case-by-case exemption process should be sufficient to ensure that expansion of regulation 18740 would not result in a significant decline in particularized real property disclosure.

**(c) Regulation Proposal - Wedding Gifts/Baby Showers and Receptions:** Section 89503(e)(2) provides that wedding gifts and gifts exchanged between individuals on birthdays, holidays, and other similar occasions shall not be prohibited or limited, provided that the gift exchanged is not substantially disproportionate in value.

Wedding gifts are reportable, but not subject to gift limits. (Section 89503(e)(2) and regulation 18942(b)). Presents exchanged at holidays, birthdays and similar occasions are not reportable nor subject to gift limits. (Regulation 18942(a)(8).) Home hospitality is also not reportable. (Regulation 18942(a)(7).) Also, there is no specific provision dealing with baby shower gifts.

Regulation 18946.2(b) was recently amended to provide for reporting of invitation-only events by public officials and candidates. This requires the reporting of the pro rata share of the cost of any event, such as a banquet, party, gala, celebration or similar function. The language of this regulation is broad enough to encompass attendance at weddings, birthday parties, and similar events, requiring the rescission of prior advice and reporting for attending these events.

**Proposal:** Consistent with the exception of section 89503(e)(2), amend regulation 18942 to codify the staff advice regarding home hospitality pertaining to attendance of weddings, birthday parties, and similar events. Amend regulation 18942 to clarify the gift limit and reporting rules pertaining to wedding gifts and attendance of wedding receptions. Codify the rule for baby shower gifts.

**(d) Regulation 18116: Reports and Statements; Filing Dates.** Regulation 18116 provides that whenever a filing deadline under the Act falls on a Saturday, Sunday, or official state holiday, the deadline is extended to the next business day. The regulation specifically excludes late contribution and late independent expenditure reports required under sections 84203 and 84204. In other words, reports required to be filed within 24 hours during the 16-day late reporting period are not allowed the next business day extension. SB 604 was signed by the Governor and went into effect on September 10, 2004. It amends sections 84203 and 84204 to, in effect, consolidate the late reports with the 24-hour election cycle reports required under sections 85309 and 85500 (added by Proposition 34).

**Proposal:** Staff proposes to amend regulation 18116 to clarify that all reports required to be filed within 24 hours, including the reports filed under sections 85309 and 85500, *are not* allowed the next business day extension. In other words, the regulation would be amended to state that the Saturday-Sunday-holiday exception does not apply to any reports required to be filed within 24 hours.

***3. Helpful Projects***

**(a) Regulation 18944.2: Gifts to an Agency.** Regulation 18944.2 provides an exception to the general gift reporting and limitation rules when a gift is made to an official's agency. The purpose of the regulation is to provide a mechanism whereby a donor may provide goods or services to a public agency without the incidental benefit to a public official being a reportable gift or limited. In order for this exception to apply, the regulation provides four criteria that must be satisfied:

> "(1) The agency receives and controls the payment.
>
> (2) The payment is used for official agency business.
>
> (3) The agency, in its sole discretion, determines the specific official or officials who shall use the payment. However, the donor may identify a specific purpose for the agency's use of the payment, so long as the donor does not designate the specific official or officials who may use the payment.
>
> (4) The agency memorializes the payment in a written public record which embodies the requirements of subdivisions (a)(1) to (a)(3) of this regulation. . ."

**Proposal:** Amend subdivision (a)(1) to allow the donor to make payments directly to an airline or hotel, rather than requiring that the agency receive the payment.

**(b) Regulation 18425: Late Contribution Reports.** A "late contribution report" is required to be filed by candidates and committees during the 16-day period just

prior to an election. This is the period following the closing date of the last regular campaign reporting deadline prior to the election, through the day before the election. A candidate being voted on in the election, and committees formed to support ballot measures being voted on in the election, must disclose within 24 hours contributions totaling $1,000 or more received from a single contributor during the late reporting period. Candidates and committees that make "late contributions" also must file reports within 24 hours.

Currently, regulation 18425(b) allows an estimated amount of late contributions to be disclosed when more than one nonmonetary contribution (such as phone bank or employee services) will be made or received during the late contribution period. If the actual amount made or received differs by 20 percent or more, the candidate or committee must file an amended late contribution report. Proposition 34 added section 85309(a) and (b), which requires state candidates and ballot measure committees to file a report within 24 hours if a contribution or $1,000 or more is received during the 90-day election cycle prior to their election.

**Proposal:** Staff recommends that the Commission consider amending regulation 18425 to also allow disclosure of estimated information on the 90-day contribution reports. In addition, the Commission may want to consider amending the regulation or adopting a new regulation allowing disclosure of estimated information for late independent expenditures and the 24-hour independent expenditure reports required during the 90-day election cycle under section 85500.

**(c) Section 91013: Late Filing of Statement or Report; Fees.** Section 91013 authorizes the Secretary of State, as well as city and county filing officers, to impose penalties on candidates and committees that file campaign statements after their deadline. Section 91013 also authorizes the filing officer to waive such penalties.

**Proposal:** Incorporate our guidelines for assessing and waiving late fines into a regulation.

## E. MISCELLANEOUS

**(a) Quarterly Regulation Calendar Updates.**

**(b) Technical Clean-Up Package 2006:** Process the technical cleanup package, including a technical correction to regulation 18735(b) is necessary to have designated employees file statements with the filing officer, not the code reviewing body.

## F. TIME-PERMITTING PROJECTS

**(a) Otherwise related nonprofit and mixed entities:** Regulation 18703.1(c) defines a public official's economic interest in a business entity that is "a parent or subsidiary of, or is otherwise related to, a business entity in which the official has one of

the interests defined in Government Code section 87103(a) or (d)." Regulation 18703.3(a)(2) states that a public official has an economic interest in a *business entity* which is a *parent or subsidiary of, or is otherwise related to,* a *business entity which is a source of income* to the official of $500 or more within 12 months prior to the time the governmental decision is made. (Section 87103(c).)

The above regulations state that an official has an economic interest in *business entities* that are parent, subsidiary or otherwise related because he or she receives income from, or has an employment or management relationship with, a related entity or entities. These regulations *only apply to business or for-profit* entities. However, we have received requests for advice involving officials who also have economic interests in nonprofit entities because the official *receives income from, or* serves in a management or other high-ranking capacity at, a nonprofit that is related – usually through a parent or subsidiary relationship (as the term might apply in a non-profit context). Moreover, the same person or substantially the same persons may control and manage two or more non-profit entities.

Adopting a regulation dealing with nonprofits would codify the approach taken in past advice letters. For instance, in a case where a city council member derived income from a nonprofit organization, the Commission stated it was appropriate to treat both the parent nonprofit and its wholly–owned and controlled subsidiary (as that term might apply in the nonprofit sector) as sources of income to the council member, and thus both were considered economic interests of hers. In another case, where a public official who received compensation from a nonprofit university, the Commission said that the university and its wholly-owned and controlled subsidiary which existed solely to benefit and serve the interests of the parent nonprofit, were both considered economic interests of the official.

**Proposed Solution:** Staff proposes expanding the otherwise related business entities regulation in 18703.1 to include nonprofits or create a separate regulation for nonprofits and mixed entities (related nonprofit and for-profit entities). A regulation to address the problem should do the following:

- State that an official has an economic interest in a nonprofit entity that is a parent, subsidiary or otherwise related to a non-profit or for-profit entity that he or she receives income from, or has an employment or management relationship with.

- Include non-profit entities in regulation 18703.1 Economic Interest, Defined: Business Entities, or create a similar regulation for nonprofits and mixed entities (related non-profit and for-profit entities).

Include nonprofit entities in regulation 18703.3: Economic Interest, Defined: Source of Income, stating that an official has an economic interest in a business entity <u>or nonprofit</u> entity which is a parent, subsidiary or otherwise related entity to a business <u>or nonprofit</u> entity.

## G. PROJECTS PROPOSED BY THE PUBLIC

**1. Letter from Stan Statham on Behalf of the California Broadcaster's Association (August 19, 2005, attached):** Mr. Statham notes that as a result of regulations adopted by the Commission regarding disclosures in ballot advertising, radio is put at a competitive disadvantage to other advertising channels (such as print, direct mail, etc.). Mr. Statham notes that depending upon the committee names and the amount of large donors involved, the disclosure in a radio advertisement for a ballot proposition could consume an entire 30 second spot. Consequently, political consultants are moving their advertising buys away from radio to media that can close the required information in a less intrusive manner.

Mr. Statham is asking that the Commission consider alternate ways to accomplish the intent of the statutes without disturbing the marketplace, such as the use of 800 numbers and/or websites. Staff recommends including this proposal on the 2006 calendar, although this may ultimately require a legislative change.

**2. Letter from Lisa Foster of McDougal, Love, Eckis, Smith Boehmer & Foley, representing Solana Beach and Imperial Beach (August 22, 2005, attached).** Ms. Foster noted problems with the application of the "public generally" rule to officials who own homes in small coastal cities where many homeowners periodically rent out their homes as vacation rentals on a short-term basis. In these cities, the distinction between owner-occupied dwellings and non-owner occupied dwellings is blurred and constantly changing. Thus, it is difficult for officials in these cities to gather accurate data reflecting the number of owner occupied and non-owner occupied residences in the jurisdiction at a given time. Ms. Foster proposes:

**(a) Amend regulation 18707.9 to include "households" as a significant segment category.** "Households" was one of the significant segment categories in regulation 18707.9 prior to 2000. This term blended the owner-occupied and non-owner occupied categories. Ms. Foster requested the "household" category be reinserted into regulation 18707.9.

**Historical Note:** In July 2000, the Commission deleted the term "household" from regulation 18707 because the term "household" could include non-property owners and created confusion with the terms "real property owners" and "home owners" which were also in the same provision.

**(b) Reduce the significant segment threshold for small cities.** This number may be meaningful in larger cities, such as Los Angeles, with a population of 3,694,820 and 1,275,412 households, or San Diego, with a population of 1,223,400 and 450,691 households. However, in small cities such as Solana Beach and Imperial Beach, it is too high to be a meaningful category and would only apply to decisions that have a similar effect on a very large percentage of the citizens.

**Historical Note:** On January 17, 2003, the Commission voted unanimously to repeal the existing public generally exception applicable to small jurisdiction, regulation 18707.3.

**(c) Reconsider/overrule prior advice letters that require officials to distinguish between owner-occupied and non-owner occupied dwellings.** Ms. Foster noted that the distinction that has been made in these advice letters between owner-occupied and non-owner occupied dwellings in the definition of "homeowner" sometimes leads to an unfair result. This is especially true in smaller cities and less with a high number of vacation rentals. Because there are cases where owner-occupied and non-owner occupied dwellings may be affected in a substantially similar manner by a decision, the advice letters stating that these categories can never be blended as a matter of law should be reconsidered.

Staff recommends against pursuing these proposals as a distinct project. Rather, to the extent they are implicated in the other "public generally" project already on the proposed calendar, staff would consider them in that context.

**Attachment 1: Assembly Bill No. 1755**
**Attachment 2: Statham and Foster Letters.**